

# HOUSE . . . . . No. 2215

---

## The Commonwealth of Massachusetts

PRESENTED BY:

**Robert F. Fennell**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to protective custody .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Robert F. Fennell	10th Essex
Jennifer M. Callahan	18th Worcester

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 2304 OF 2007-2008.]

## The Commonwealth of Massachusetts

---

In the Year Two Thousand and Nine

---

### AN ACT RELATIVE TO PROTECTIVE CUSTODY .

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Chapter 111 E of the General Laws, as appearing in the 2004 Official edition, is hereby  
2 amended by inserting after section 9 the following new section:-

3       **Section 9A Overdosed persons; assistance to facility or protective custody**

4       Section 9A. Any person who is incapacitated by a drug overdose may be assisted by a police officer or emergency  
5 technician with or without their consent and shall be placed in protective custody at a police station or transferred to  
6 a facility. To determine for purposes of this chapter only, whether or not such person has had a drug overdose, the  
7 police officer or emergency technician would have to have used a narcan or similar chemical derivative to  
8 resuscitate the person from the overdose.

9       Any person presumed to have overdosed, and to be held in protective custody at a police station shall, immediately  
10 after such presumption, have the right and be informed of said right to make one phone call at his own expense and  
11 on his own behalf. Any person assisted by a police officer to a facility under this section shall have the right to make  
12 one phone call at his own expense on his own behalf and shall be informed forthwith upon arriving at the facility of  
13 said right. The parent or guardian of any person, under the age of eighteen, to be held in protective custody at a  
14 police station shall be notified forthwith upon his arrival at said station or as soon as possible thereafter.

15       If any incapacitated person is assisted to a police station, the officer in charge or his designee shall notify forthwith  
16 the nearest facility that the person is being held in protective custody. If suitable treatment services are available at a  
17 facility, the department shall thereupon arrange for the transportation of the person to the facility in accordance with  
18 the provisions of section nine.

19       No person assisted to a police station pursuant to this section shall be held in protective custody against his will;  
20 provided, however, that if suitable treatment at a facility is not available, an incapacitated person may be held in  
21 protective custody at a police station until he is evaluated by a psychiatrist or physician and are offered the resources  
22 that are available for their possible addiction, or for a period not longer than twelve hours, whichever is shorter.

23       A police officer acting in accordance with the provisions of this section may use such force as is reasonably  
24 necessary to carry out his authorized responsibilities. If the police officer reasonably believes that his safety or the  
25 safety of other persons present so requires, he may search such person and his immediate surroundings, but only to  
26 the extent necessary to discover and seize any dangerous weapons which may on that occasion be used against the  
27 officer or other person present; provided, however, that if such person is held in protective custody at a police station  
28 all valuables and all articles which may pose a danger to such person or to others may be taken from him for  
29 safekeeping and if so taken shall be inventoried.

30 A person assisted to a facility or held in protective custody by the police pursuant to the provisions of this section,  
31 shall not be considered to have been arrested or to have been charged with any crime. An entry of custody shall be  
32 made indicating the date, time, place of custody, the name of the assisting officer, the name of the officer in charge,  
33 whether the person held in custody exercised his right to make a phone call, such entry shall not be treated for any  
34 purposes, as an arrest or criminal record